

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

NAZIR FAZAL,)	
)	
Appellant,)	
)	
v.)	C.A. No. N10A-04-011 WCC
)	
CENTRAL PARKING SYSTEM)	
and)	
UNEMPLOYMENT INSURANCE)	
APPEAL BOARD,)	
)	
Appellees.)	

Submitted: March 18, 2011
Decided: June 30, 2011

OPINION

Appeal from Unemployment Insurance Appeal Board. AFFIRMED.

Nazir Fazal, 1243 S. 57th Street, Philadelphia, PA 19143. *Pro Se* Appellant.

Albert H. Manwaring, IV, Esquire; James H.S. Levine, Esquire; Pepper Hamilton LLP, 1313 Market Street, Suite 5100, P.O. Box 1709, Wilmington, DE 19899-1709. Attorneys for Appellee Central Parking System.

Katisha Fortune, Esquire; Department of Justice, 820 N. French Street, Wilmington, DE 19801. Attorney for Unemployment Insurance Appeal Board.

CARPENTER, J.

Nazir Fazal (“Appellant”) appeals the decision by the Unemployment Insurance Appeals Board (“Board”) refusing to consider the substance of his appeal because it was untimely filed. Previously, the Appeals Referee had denied his claim for unemployment compensation, finding that he was terminated for just cause in connection with his employment. The Court finds that the Board did not abuse its discretion in denying Appellant’s claim. Accordingly, the decision of the Board will be affirmed.

FACTS

The Appellant was employed by Central Parking System (“Central”) from September 26, 2008 until April 25, 2009.¹ On April 25, 2009, the Appellant was involved in an altercation with one of Central’s clients and was asked to leave the client’s work site.² The client informed Central of the altercation and asked Central not to send the Appellant to its work site again.³ The Appeals Referee found that Central had work available at other locations and would have sent the Appellant to one of those locations. However, the Appellant did not report for work as assigned on April 27, April 28, or April 30.⁴ Thereafter, on May 1, 2009, Central sent the Appellant a letter accepting his resignation.

¹ R. 21.

² *Id.*

³ *Id.*

⁴ *Id.* at 22.

PROCEDURAL HISTORY

The Appellant filed a claim for benefits effective October 18, 2009. The Claims Deputy determined on December 10, 2009 that the Appellant was discharged without good cause and was therefore entitled to receive unemployment compensation. Central timely filed its appeal from the Claims Deputy's decision. A hearing was scheduled before the Appeals Referee on January 14, 2010, which the Appellant attended but Central's representative did not. The Referee dismissed the appeal for failure to prosecute. Central appealed the dismissal and the case was remanded to the Referee. A second hearing was scheduled for February 25, 2010. The Department of Labor ("Department") sent notice to both parties by first-class mail at the last address of record. At the second hearing, a representative from Central was present but the Appellant was not. In a decision mailed February 26, 2010, the Referee reversed the Claims Deputy's determination and denied benefits to the Appellant. The Department sent the decision to the Appellant via first-class mail to his last address of record, which was not returned to the Department as undeliverable by the United States Postal Service. The last day to appeal the Referee's decision was March 8, 2010.⁵ On March 12, 2010, the Appellant filed an appeal with the Board.

⁵ See 19 Del. C. §3318.

In a decision mailed April 12, 2010, the Board declined to accept the Appellant's late appeal and thereby affirmed the Referee's decision. The Appellant then filed an appeal with this Court on April 16, 2010. The Court issued a briefing schedule which required the Appellant to submit an Opening Brief no later than December 21, 2010. On that date, the Appellant submitted to the Court a handwritten, two-paragraph statement affirming that he is not in communication with Central and that he has not received unemployment benefits. The statement bears his signature and is attached to an affidavit of service upon Central. Central timely filed an Answering Brief on January 10, 2011. The Appellant did not file a Reply Brief. The Court sent a final notice of delinquent brief to the Appellant on February 16, 2011 and received no response.

STANDARD OF REVIEW

When reviewing an appeal from the Board, this Court's role is limited to evaluating the record in a light most favorable to the prevailing party in order to determine if the record before the Board included substantial evidence that a reasonable mind could accept as adequate support for the Board's conclusions and that the Board's conclusions are free from legal error.⁶ Substantial evidence is defined as evidence from which an agency could fairly and reasonably reach the

⁶ *Unemployment Ins. Appeal Bd. of Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

conclusion that it did.⁷ The Court will uphold a discretionary decision of the Board unless it finds that there has been an abuse of discretion.⁸ An abuse of discretion occurs where the Court finds that the Board “act[ed] arbitrarily or capriciously or exceed[ed] the bounds of reason in view of the circumstances, and has ignored recognized rules of law or practice so as to produce injustice.”⁹

DISCUSSION

This appeal presents the single question of whether the Board abused its discretion in refusing to consider the merits of the Appellant’s appeal.¹⁰ Under 19 *Del. C.* §3318, the decision of an appeals tribunal will be deemed final “unless within 10 days after the date of notification or mailing of such decision further appeal is initiated....”¹¹ The Board does have discretion to act on its own motion beyond the ten-day appeal period to consider a case where no valid appeal has been filed by the parties in extraordinary circumstances.¹² The *Funk* court held that the Board had not abused its discretion in refusing to consider the appeal *sua*

⁷ *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

⁸ *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

⁹ *PAL of Wilmington v. Graham*, 2008 WL 2582986 at *4 (Del. Super. Jun. 18, 2008).

¹⁰ The Court acknowledges that the Appellant’s “brief statement” submitted on the date that his opening brief was due does not conform to the briefing requirements set forth in Superior Court Civil Rule 107© and that the Court is permitted to dismiss this appeal under Superior Court Civil Rule 107(e) for this deficiency. However, the Court also notes that *pro se* litigants, such as the Appellant in this case, are to be treated with greater leniency and therefore will not summarily dismiss this appeal on these grounds. *See, e.g., McGonigle v. George H. Burns, Inc.*, 2001 WL 1079036, *1 (Del. Super. Sept. 4, 2001) (“[T]he Court may grant *pro se* Claimants accommodations that do not affect the substantive rights of those parties involved in the case at bar.”).

¹¹ 19 *Del. C.* §3318©.

¹² *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991).

sponte of a claimant who contended that he had not received notice of the referee's decision because the notice of the decision had been mailed to his parents' address.¹³

There is a presumption under Delaware law that mailed matter, correctly addressed, stamped, and mailed was received by the party to whom it was addressed.¹⁴ The Board's decision reflects that the Department sent the Referee's decision by first-class mail to the Appellant's last known address of record, and the letter was not returned to the Department as undeliverable by the United States Postal Service. The Appellant has presented no evidence whatsoever that he did not receive notice of the referee's decision through the mail because it was incorrectly addressed or because of any other error that could be attributed to the Department. Nor has the Appellant presented any other argument as to why his failure to file a timely appeal with the Board should be excused. Accordingly, the Court finds that there are no unusual circumstances which would warrant a finding that the Board abused its discretion by refusing to hear the Appellant's untimely appeal *sua sponte*. The Court therefore AFFIRMS the decision of the Board.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

¹³ *Id.* at 225-26.

¹⁴ *State v. Camper*, 347 A.2d 137 (Del. Super. 1975).